

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT WORTH DIVISION
2007 JUN 28 AM 11:19
CLERK OF COURT

KELLIE BURCHFIELD, SONJA K.
ROSS, LOLA STONE, AND REBECCA
WRIGHT,

V.

4-07 CV - 378 - Y
Civil Action No. _____

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

I. STATEMENT OF THE CASE

1. This action was filed initially in the 236th Judicial District Court of Tarrant County, Texas in a lawsuit styled *Kellie Burchfield, Sonja K. Ross, Lola Stone, and Rebecca Wright v. Armor Accessories, Inc. a/k/a Armor Holdings, Inc.*, Cause No. 236-224086-07. In Plaintiffs' Original Petition With Request For Written Disclosures to Defendant, Armor Accessories, Inc. ("Plaintiffs' Petition") Plaintiffs' allege they were subjected to sex discrimination in the form of an allegedly hostile work environment. In addition, Plaintiffs have alleged related state law claims arising from a common nucleus of operative facts. As reflected in Exhibits "A", "B", and "C," and "D" to Plaintiffs' Petition, Plaintiffs requested and received prerequisite "right-to-sue" notices, dated March 5, 2007, from the U.S. Equal Employment Opportunity Commission ("EEOC") after having filed charges of discrimination under Title VII

of the Civil Rights Act of 1964 [42 U.S.C. §2000e *et seq.*] (see attached Appendix of State Court Documents, Plaintiffs' Petition, Tab 4, pp. 020-023). This lawsuit was filed within the 90-day time period mandated by Title VII (as described in Plaintiffs' "right-to-sue" notices). 42 U.S.C. §2000e-5(f)(1). The district courts of the United States have original jurisdiction over this action, because Plaintiffs' claims arise under federal law and substantial disputed questions of federal law comprise necessary elements of Plaintiffs' cause of action. 28 U.S.C. §1331 and §1343(3). Alternatively, the district courts of the United States have original jurisdiction over this action, because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and the action involves a controversy between citizens of different states. 28 U.S.C. §1441(b). According to Plaintiffs' Petition, Plaintiffs are residents of Texas and New Mexico. (See attached Appendix, Tab 4, p. 007) Defendant Armor Accessories, Inc. is a Delaware corporation with its headquarters and principal place of business located in Jacksonville, Florida. 28 U.S.C. §1332(c)(1). Moreover, this court has supplemental jurisdiction over Plaintiffs' pendant state law claims. 28 U.S.C. §1367(a).

II. TIMELINESS OF REMOVAL

2. This notice of removal is timely pursuant to 28 U.S.C. §1446(b). Less than thirty (30) days have elapsed since the date Defendant received a copy of Plaintiffs' Petition and Citation, which was served by certified mail upon Defendant's registered agent for service, Corporation Service Company, on May 29, 2007. The return of citation was filed June 5, 2007. (See attached Appendix, Tab 5, p. 029). Plaintiffs' Petition was received by Defendant's attorney on May 31, 2007.

III.
GROUND FOR REMOVAL

3. *Federal Question.* Removal is proper by virtue of 28 U.S.C. §§1331, 1343(3), 1441(b) and 1446. The federal district courts have been conferred original jurisdiction over cases and controversies involving the questions of federal law presented by Plaintiffs' Title VII claims. 42 U.S.C. §2000e-5(f).

4. *Diversity.* In addition and in the alternative, this action properly may be removed pursuant to 28 U.S.C. §1441(a), because there is complete diversity of citizenship among the parties. Therefore, diversity jurisdiction exists. 28 U.S.C. §1332. Plaintiffs allege in Plaintiffs' Petition that they are residents of Texas and New Mexico. (See attached Appendix, Tab 4, p. 007). Defendant Armor Accessories, Inc. is, and at all material times has been, a Delaware corporation with its headquarters and principal place of business located in Jacksonville, Florida. Accordingly, Defendant would be deemed a citizen of Delaware and a citizen of Florida. 28 U.S.C. §1332(c)(1). Although no specific amount in controversy is stated expressly in Plaintiffs' Petition, Defendant avers that the allegations contained within Plaintiffs' Petition reflect that Plaintiffs are, in fact, seeking an award of damages in excess of \$75,000.00. Individually and collectively, Plaintiffs are seeking monetary awards for back wages, past and future mental anguish and physical pain, past and future medical expenses, and exemplary damages "in an amount exceeding the courts [sic] jurisdictional limits." (See attached Appendix, Plaintiffs' Petition, Tab 4, pp. 008-023). Plaintiffs also are seeking to recover their reasonable attorney's fees in addition to being awarded monetary damages. (See Appendix, Tab 4, p. 019). While Plaintiffs' individual claims for sex discrimination are limited or "capped" under both federal law and state law, the amount of the "cap" is \$300,000.00. 42 U.S.C. §1981a(3)(D); Tex. Lab. C

§§21.2585 and 21.259. Plaintiffs' related state law tort claims (*egs.* defamation, assault, invasion of privacy, *etc.*) are not subject to such monetary damages "caps."

5. *Venue.* Venue in the Fort Worth Division of the Northern District of Texas is proper pursuant to 28 U.S.C. §1441 in that: (1) Plaintiff Kellie Burchfield is alleged to be a resident of Johnson County, Texas; (2) Plaintiffs Sonja K. Ross and Lola Stone are alleged to be residents of Tarrant County, Texas; (3) Plaintiffs' alleged cause of action arose in Tarrant County, Texas; and (4) Plaintiffs' state court action was filed in Tarrant County, Texas—all within the territorial boundaries of the Fort Worth Division of the United States District Court for the Northern District of Texas.

IV.

COPIES OF STATE COURT DOCUMENTS

5. Pursuant to 28 U.S.C. §1446(a) and Local Rule 81.1, Defendant has attached an indexed Appendix containing certified copies of all known state court pleadings, civil process, orders (if any), state court docket sheet, and other documents filed in the state court, as follows:

Tab 1: Index of State Court Documents

Tab 2: State Court Civil Docket Sheet

Tab 3: Letter from Plaintiffs' attorney to State Court File Desk

Tab 4: Plaintiffs' Original Petition with Request for Written Disclosures to
Armor Accessories, Inc.

Tab 5: Citation and Officer's Return

Tab 6: Letter from Defendant's attorney to State Court Clerk

Tab 7: Defendant's Original Answer

V.

CERTIFICATE OF INTERESTED PERSONS

6. Pursuant to L.R. 3.1(f) and L.R. 7.4 of the Local Rules of the Northern District of Texas, Defendant's Certificate of Interested Persons is being filed with this Notice of Removal.

VI.

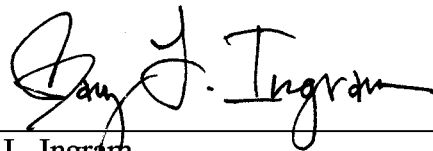
REMOVAL NOTICE FILED IN STATE COURT

7. Pursuant to 28 U.S.C. §1446(d), written notice of the removal of this action is being filed with the clerk of the state district court.

WHEREFORE, PREMISES CONSIDERED, Defendant has removed this action for trial or other final disposition from the 236th Judicial District Court of Tarrant County, Texas to this court.

DATE: June 28, 2007.

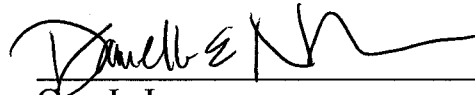
Respectfully submitted,



Gary L. Ingram
State Bar No. 10397500
Danielle E. Needham
State Bar No. 24041571
JACKSON WALKER L.L.P.
301 Commerce Street, Suite 2400
Fort Worth, Texas 76102
Telephone: (817) 334-7245
Telecopier: (817) 334-7290
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE AND NOTICE OF FILING

The undersigned attorney of record for Armor Accessories, Inc. a/k/a Armor Holdings, Inc. certifies that on 24th day of June, 2007, a copy of a Notice of Removal of this action was filed with the clerk of the 236th Judicial District Court of Tarrant County, Texas and that written notice of filing of the Notice of Removal was served upon the Plaintiffs, Kellie Burchfield, Sonja K. Ross, Lola Stone, and Rebecca Wright, by and through their attorneys of record, Avery McDaniel, LAW OFFICES OF AVERY MCDANIEL, 800 West Weatherford Street, Fort Worth, Texas 76102. Attached to said notice was a copy of the Notice of Removal.

A handwritten signature in black ink, appearing to read "Gary L. Ingram", written over a horizontal line.

Gary L. Ingram

Danielle E. Needham

CIVIL COVER SHEET

The US-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kellie Burchfield, Sonja K. Ross, Lola Stone and
Rebecca Wright

DEFENDANTS

Armor Accessories, Inc. a/k/a
Armor Holdings, Inc.

(b) County of Residence of First Listed Plaintiff Johnson
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Avery McDaniel, Law Offices of Avery McDaniel, P.C.
800 West Weatherford Street, Fort Worth, TX 76102 (817) 810-9500

Attorneys (If Known)

Gary L. Ingram, Jackson Walker L.L.P.
301 Commerce Street, Suite 2400, Fort Worth, TX 76102 (817) 334-7245

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 2000e-5(f); 28 U.S.C. Section 1332

Brief description of cause:

Employment discrimination (harassment) and personal injury

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06-28-2007

SIGNATURE OF ATTORNEY OF RECORD

Gary J. Ingram

FOR OFFICE USE ONLY

RECEIPT #

FW35910

AMOUNT

350

APPLYING IFP

JUDGE

4

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**United States District Court
Northern District of Texas**

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
236 th Judicial District Court of Tarrant County, Texas	236-224086-07

2. Style of the Case: *Kellie Burchfield, Sonja K. Ross, Lola Stone, and Rebecca Wright vs. Armor Accessories, Inc. a/k/a Armor Holdings, Inc.*

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party and Party Type</u>	<u>Attorney(s)</u>
PLAINTIFFS	Avery McDaniel
Kellie Burchfield	State Bar No.24000121
Sonja K. Ross	Law Offices of Avery McDaniel, P.C.
Lola Stone	800 West Weatherford Street
Rebecca Wright	Fort Worth, Texas 76102
	Telephone: 817-810-9500
	Telecopier: 817-882-8444
DEFENDANTS	Gary L. Ingram
Armor Accessories, Inc. a/k/a	State Bar No. 10397500
Armor Holdings, Inc.	Danielle E. Needham
	State Bar No. 24041571
	JACKSON WALKER L.L.P.
	301 Commerce Street, Suite 2400
	Fort Worth, Texas 76102
	Telephone: 817-334-7245
	Telecopier: 817-334-7290

Supplemental Civil Cover Sheet
Page 2

3. **Jury Demand:**

Was the Jury Demand made in State Court? ☒ Yes ☐ No

If "Yes", by which party and on what date?

Plaintiffs Kellie Burchfield, Sonja K. Ross, Lola Stone, Rebecca Wright	May 22, 2007
_____ Party	_____ Date

4. **Answer:**

Was the Answer made in State Court? ☒ Yes ☐ No

If "Yes", by which party and on what date?

Defendants Armor Accessories, Inc. a/k/a Armor Holdings, Inc.	June 15, 2007
_____ Party	_____ Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party	Reason(s) for No Service
None	

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party	Reason
None	

Supplemental Civil Cover Sheet
Page 3

7. **Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
PLAINTIFFS – Kellie Burchfield, Sonja K. Ross, Lola Stone, and Rebecca Wright	Sex discrimination claims and various common law personal injury claims; also seeking attorney's fees
DEFENDANTS Armor Accessories, Inc. a/k/a Armor Holdings, Inc.	Defendants deny Plaintiffs' allegations.